

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION**

**WILLIAM MILLER,**

**Plaintiff,**

**v.**

**Civil Action No. 2:18-cv-00412**

**LINCOLN COUNTY COMMISSION, d/b/a  
Lincoln County Sheriff's Department;  
GARY LINVILLE, Sheriff; REX CLARK,  
Chief Deputy; ANTHONY ADKINS, Deputy;  
ZAC SOWARD, individually and in their  
official capacities; TOWN OF HAMLIN; and  
ALAN ASHWORTH, individually and in his  
official capacity as a Hamlin Police Officer,**

**Defendants.**

**ORDER**

Pending before the Court is a Joint Motion to Compel The Lincoln County 911 Center to Release 911 Records Relevant to This Proceeding (ECF No. 26). Neither the Lincoln County 911 Communications Center nor the Lincoln County Prosecuting Attorney have filed a response to the motion and the time allotted to file a response to the motion has expired.

In the Joint Motion, the parties are requesting the Court to compel the Lincoln County 911 Center to release all 911 recordings relevant to this civil action.

On March 28, 2018, counsel for Defendant Alan Ashworth, individually and in his official capacity as a Hamlin Police Officer, sent a Freedom of Information Act ("FOIA") to the Lincoln County 911 Center requesting copies of:

All Lincoln County 911 records (CAD Sheet and Recordings if possible) related to William Miller's interactions with law

enforcement on March 31, 2017. I would like to inspect all recordings related to communications by and between Gary Linville, Rex Clark, Anthony Adkins, Zac Sowards, and Alan Ashworth.

It is our understanding that on or before March 31, 2017, William Miller was involved in a police chase with Sheriff Deputy Rex Clark. Following the police chase, some or all of the individuals named above entered William Miller's home and arrested him. Allegedly, William Miller was later transported to the hospital. We would like to inspect recordings related to the police chase, William Miller's arrest, and William Miller's alleged transportation to the hospital. (ECF No. 26-1).

Pursuant to the FOIA request, Amy Ennis of the Lincoln County 911 Center created a CAD sheet and compiled the recordings. ECF No. 26 at p. 2. Per Lincoln County 911 Center policy, Ms. Ennis submitted the requested records to the Lincoln County Commission and the Lincoln County Prosecutor's office for approval. *Id.* On April 12, 2018, Charles Vance approved the request on behalf of the Lincoln County Commission; Gary Linville, Lincoln County Sheriff, approved the request also. (ECF No. 26-2).

On April 17, 2018, Lincoln County Prosecutor James Gabehart corresponded with Allen Holder and Amy Ellis, refusing to approve the Lincoln County 911 Center's request to release the records. Mr. Gabehart stated:

While I have no objection to the release of this information, I cannot approve its release pursuant to a FOIA request, contrary to W. Va. Code 24-6-3. Under this statute, while FOIA requests are proper for records relating to civil matters such as traffic accidents involving no criminal charges, all calls for emergency services reporting alleged criminal conduct are confidential, not subject to FOIA, and only released in the manner prescribed by the statute (pursuant to an order by a court of competent jurisdiction, a valid subpoena, or through discovery in a criminal trial). While I would appreciate being notified in the future if such information is sought through issuance of a subpoena if it involves a criminal case, so that I might file a motion to quash such a subpoena in the event a criminal investigation is

ongoing, I have no intention of doing so in the present case because the underlying criminal charges have been resolved. (ECF No. 26-3).

Having considered the arguments of the parties in the Joint Motion, it is hereby **ORDERED** that the Joint Motion to Compel The Lincoln County 911 Center to Release 911 Records Relevant to This Proceeding (ECF No. 26) is **GRANTED**. It is further **ORDERED** that the Lincoln County 911 Center release all records related to this proceeding to each party within **ten (10) days** of entry of the Order.

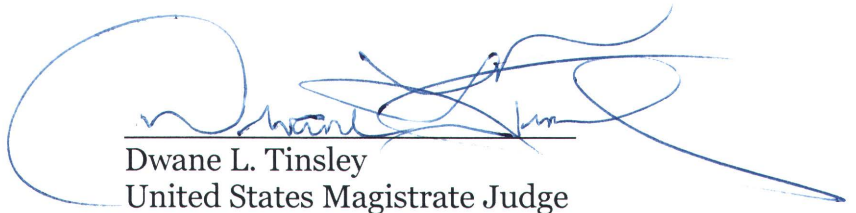
The Clerk is directed to transmit copies of this Order to counsel of record as well as the following, via U. S. Mail:

Allen Holder  
Amy Ellis  
Lincoln 911 Communications Center  
911 Macaroni Drive  
West Hamlin, WV 25571

and

James W. Gabehart  
Office of the Prosecuting Attorney of Lincoln County  
P. O. Box 685  
Hamlin, WV 25523

Enter: June 27, 2018



Dwane L. Tinsley  
United States Magistrate Judge